

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION

HENRY FORD VILLAGE, INC. and
ERICKSON RETIREMENT COMMUNITIES

A Joint Employer¹

CASE NO. 7-RC-22072

and

INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA (UAW), AFL-CIO

Petitioner

APPEARANCES:

Maurice Baskin, Attorney, of Washington, D.C. and Gary Danielson, Attorney, of
St. Clair Shores, Michigan, for the Employer.

John G. Adam, Attorney, of Southfield, Michigan, for the Petitioner.

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor
Relations Act, as amended, hereinafter referred to as the Act, a hearing was held

¹ The name of the Employer appears as amended at the hearing. The Petitioner, at the hearing, moved to amend the petition to include Erickson Retirement Communities (Erickson) as a joint employer with Henry Ford Village, Inc. The attorney for Henry Ford Village, Inc. indicated that he also represented Erickson and could speak for that company. In its brief, the Employer stipulated that Henry Ford Village, Inc. and Erickson constitute a joint employer for the purposes of this proceeding. Any notice requirements concerning Erickson were thereby waived. The motion to amend the petition is granted. By contract, Erickson provides full management services for Henry Ford Village, Inc. The employee handbook is provided by Erickson. The executive director, Lawrence Vidovic, is employed by Erickson and is president of the board of directors of Henry Ford Village, Inc. The directors of the various departments at Henry Ford Village, Inc., who are employed by Erickson, have the authority to approve employee hiring and terminations. I find that Henry Ford Village, Inc. and Erickson constitute a joint employer.

before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,² the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

The Petitioner seeks a unit of service and maintenance employees, limited to Frederick House, the Employer's assisted living facility and care center, including all regular full-time, part-time and contingent/on-call activities assistants, certified nurse assistants, cooks, dietary aides, home health aides, housekeepers, laundry aides, nursing assistants, maintenance employees, receptionists, re-occupancy technicians, restorative aides, unit clerks, unit secretaries, and all other support services employees; but excluding physicians, registered nurses (RNs), technical employees, skilled maintenance employees, business office clerical employees, managers, guards and supervisors as defined in the Act. By the inclusion of dietary aides, the Petitioner intends to include all dining or food service employees. The Employer contends that only a campus-wide service and maintenance unit would be appropriate. The parties agreed to the exclusions enumerated by the Petitioner as well as the exclusion of all professional employees and licensed practical nurses (LPNs) as technical employees. There are approximately 200 employees in the petitioned for unit and 483 employees in a campus-wide unit.

² The Employer and Petitioner each filed briefs which were carefully considered. In addition, the Employer requested permission to file a reply brief in response to the Petitioner's argument in its brief for a separate food department unit. The Petitioner filed an objection to this Employer request. In view of the fact that the Petitioner raised for the first time in its brief the alternate food department unit, the Employer's request to file a reply brief is granted.

The Employer operates a continuing care retirement community which provides a full continuum of care, including health care, other than acute care, and related services. Generally, the level of care increases as residents move from independent living apartments to assisted living to the care center, which is a nursing home facility. There are 868 independent living apartments, 98 assisted living apartments, and 89 private nursing home rooms which house a total of 1255 residents.

The Employer is located on a 35-acre campus surrounded by a fence. There is a single entrance to the community with a guard gate. All the buildings are connected by climate controlled, enclosed walkways. The Village Crossing Community Building contains a lobby and reception desk inside the main entrance. The call lights and mail room for the whole campus are located in the area behind the reception desk. All the administrative or management offices for all divisions of the Employer are located in Village Crossing, except for transportation and grounds which is housed in a garage next to Frederick House. Also located in Village Crossing are various community rooms, including card rooms, a billiards room, and an exercise room. A Comerica Bank branch is located there for use of residents and employees. Dining facilities in Village Crossing include the Great Lakes Dining Room, the Windows Café, and the Village Market which sells groceries and sundries. Employees can have meals at the Windows Café. The Chapel Court building contains a games room, craft studio, library, and computer room as well as a chapel. The remainder of the building is occupied by independent living apartments. Greenfield Commons Community Building houses a lobby, mail room, a card area, a reading area, television studio, and beauty salon/barber shop. Also located in Greenfield Commons are the St. Clair Dining Room and the Edison Room which is used for stage shows or as a dance floor and can be rented by residents for special occasions. Berkshire Gardens, Canterbury Square, Kingsbury Court, Bridgeside Place, Hampton Square, and Parkview Terrace contain independent living apartments. There is a Medical Center located between Hampton Square and Parkview Terrace which operates like a doctor's office where residents are seen by appointment. Connected to Kingsbury Court by a walkway is the aquatics center which houses a swimming pool and jacuzzi/spa. Lastly, Frederick House, which is connected by a walkway to Bridgeside Place, contains the assisted living facility and the care center. Located within Frederick House are five dining rooms, a beauty salon/barber shop, an activity room, a lounge, and a physical therapy area.

The Employer's highest management official is Executive Director Lawrence Vidovic. Reporting to Vidovic are the heads of the Employer's nine divisions; health services, information systems, medical center, resident life, sales and information, finance, general services, human resources, and dining services.

There are no service and maintenance unit employees in the information systems division, sales and information division, the finance division, or human resources.

The health services division is headed by Director/Administrator Susan Gadlage. Reporting to Gadlage is Director of Nursing Renee Dillon. Employees within the health services division include certified nurse assistants (CNAs), home health aides, receptionists, restorative aides, unit clerks/secretaries, and activities assistants. There are 103 CNAs, 37 of whom are contingent. The CNAs are responsible for the personal care of residents and support the nursing staff. The majority of them work in Frederick House, but they take residents to other areas of the campus. There are 23 home health aides, 3 of whom are contingent. The home health aides report to the home support manager whose office is located in Frederick House. They provide personal assistance with such tasks as bathing, dressing, and taking medications. In Frederick House, that service is included in the fees. However, residents in the independent living apartments can and do contract for the assistance of home support aides. Frederick House residents are brought by aides to participate in swimming or other exercise programs open to all residents. There are three receptionists assigned to Frederick House who report to the director of nursing. There are seven other receptionists who presumably work elsewhere throughout the campus and report to the resident life director. One of the receptionists is a contingent employee. The two restorative aides work at Frederick House as do the three unit clerks/secretaries. There are five or six activities assistants assigned to Frederick House. The record does not disclose if there are activities assistants assigned to other areas. The activities assistants assigned to Frederick House also help with activities elsewhere.

The medical center is staffed by two physicians. Other specialists are brought in by appointment. Also employed in the medical center are a clinical nurse specialist, a physician assistant, and two nurse assistants who report to Medical Center Director Karen Merritt.³ There are three clerical employees who handle appointments and billing.

The resident life division is headed by Director Kelly Moran Trudell. This division consists primarily of professional staff. However, the receptionists who do not work in Frederick House fall within the resident life division.

The general services division is headed by Director Fred Moschetta. There are 31 housekeepers who report to Housekeeping Manager Joe Truszkowski. They are responsible for the care of common areas as well as resident apartments. In Frederick House the housekeeping service is included in the fees, but

³ Employer's exhibit 4 indicates that there are a total of six nurse assistants. It is not clear whether there are an additional four nurse assistants working elsewhere.

independent living residents can and do contract for housekeeping service. Fourteen of the housekeepers work in Frederick House.

There are 20 maintenance employees who work throughout the campus and report to Facilities Manager Dave Mercer. They are responsible for maintenance tasks in resident apartments and common areas.

There are seven re-occupancy employees who report to Special Projects Manager Mike Sobieski. They are responsible for preparing apartments for new residents and are not assigned to any particular area of the campus. Also reporting to Sobieski are six laundry aides. The laundry area is in the basement of Frederick House. All dining service linens as well as residents' laundry are done by the aides in that area. Laundry service is included in the fees for Frederick House residents, but independent living residents can and do contract for laundry service. The laundry aides pick up and deliver laundry for residents throughout the campus.

The Employer provides free transportation service to residents within a specific geographical area and beyond that on a contract basis for a fee. Transportation is also provided for planned trips to various attractions. This service is available to all residents, including those at Frederick House. There are eight drivers, one of whom may be contingent, who report to Transportation and Grounds Manager Mike Horn. Also reporting to Horn is an unspecified number of groundskeepers who work throughout the campus.

Lastly, there are nine part-time trash removal employees who work two days a week.⁴ The general services division also employs nine security employees who report to Security/EMS Manager Colin McGee. These uniformed security employees provide the first response to apartment call lights, including an assessment of the situation and provision of initial medical attention. They also perform latch checks of all campus apartments and staff the guard gate at the entrance. There is no discussion on the record as to whether these security employees are guards as defined in the Act or the positions of the parties as to whether they should be included in the unit.

The dining services division is headed by Director Sharon Nank. Assistant Director Shawn Trudgeon has offices in both Village Commons and Frederick House because as a dietician she is available to any resident who requires or desires dietary assistance. Frederick House Dining Services Manager Michael Wilson, who reports to Nank, is responsible for the five dining rooms in Frederick

⁴ The record does not reflect the positions of the parties concerning the inclusion of the trash removal employees and I am not able to make a determination from the record evidence. Therefore, the trash removal employees may vote in the election subject to challenge.

House. Also reporting to Nank are CB1 Dining Services Manager Ronald Colasanti, who is responsible for the Great Lakes Dining Room, and CB2 Dining Services Manager, which position is currently open, who is responsible for the St. Clair Dining Room. Dining Services Manager Rosemarie Sirianni is in charge of the Windows Café. The managers prepare employee schedules which are posted inside the office located in the kitchen of each dining room. The Village Market is staffed by dining services employees. Residents are free to dine at any of the dining facilities. The Great Lakes Dining Room is the most formal and serves only dinner. Residents order off menus and meals are served by the wait staff. The St. Clair Dining Room serves a buffet style dinner. The Windows Café offers casual dining for breakfast and lunch and take out dinners. The five dining rooms in Frederick House are smaller and serve three meals a day which are included in the fees of Frederick House residents. The smaller size allows for greater attention to the needs of the residents there. There are 229 dining services employees, 167 of whom are contingent. The various job classifications within the dining services division include cooks, hosts/hostesses (in Great Lakes and St. Clair only), receptionists, dining aides, captains, waiters/waitresses, dishwashers, buspersons, banquet servers, and stock utility employees. Dining services employees are expected to assist residents with ambulatory problems and observe and report any behavioral changes in residents. Cooks are assigned to a particular dining room. While there is some evidence that cooks change dining rooms, the record is silent as to frequency or whether such moves are temporary or permanent. Other dining services employees are assigned by dining room, but are reassigned to other dining rooms in the event of short staffing.

All the employees in the petitioned-for unit and campus-wide share a common wage scale, benefits, and personnel policies as reflected in the employee handbook distributed to all employees. Employees in a certain job classification are paid the same wage rate regardless of their work location. The human resources department services all the employees and provides the same orientation for all new hires. Managers interview job candidates and make hiring recommendations to division directors, but human resources extends the official offer to hire and explains the benefits and responsibilities to all new employees. The human resources department also oversees all disciplinary actions and terminations to insure that due process was followed.

Job openings throughout the campus are posted in the human resources area. Employees have moved from jobs in Frederick House to other areas, and vice versa. There are three employee time clocks located in Frederick House, Village Commons, and Greenfield Commons. Employees can use any of the time clocks because they all feed the information into a central computer. All employees wear badges which denote their job classification, but not a work location. Volunteer employees participate in various activity events for residents

from throughout the campus. Swimming and aerobics programs are open to all employees.

Contingent employees do not work a regular schedule. An addendum to the employee handbook concerning contingent/on call attendance states that contingent employees are required to work eight weekday hours and eight weekend hours every month to maintain active employment status. On call employees are full-time employees who are scheduled to be available to report for work as needed.

It is well established that a single facility unit is presumptively appropriate. This presumption is applicable to the health care industry as well. *Passavant Retirement & Health Center*, 313 NLRB 1216 (1994). However, the presumption can be overcome by evidence of physical and operational integration of facilities, including central control over daily operations and labor relations, similarity of employee skills, functions, and working conditions, employee interchange, common supervision, and distance between locations.

The Employer is a single, integrated facility. There is a single entrance to the enclosed campus and all the buildings, including Frederick House, are connected by covered walkways. None of the amenities such as dining rooms or activity areas are exclusive to a particular group of residents.

Control over labor relations and human resources is highly centralized. All offers of employment are extended by the human resources division which also must approve all employee terminations. The same orientation program is provided to all new hires, and a single employee handbook covers all employees. The wage structure and benefits are the same for all employees.

Most of the job classifications at Frederick House exist throughout the campus, including dining service employees, home health aides, and housekeepers. The skills and functions of these employees appear to be the same regardless of their specific work location. While each dining room has its own manager, there is no evidence that home health aides or housekeepers who work in Frederick House are separately supervised from those who work elsewhere on the campus. Drivers, groundskeepers, maintenance employees, and reoccupancy employees work throughout the campus and are not assigned to specific work locations. The laundry employees located in Frederick House provide laundry services for the entire campus.

Employees assigned to Frederick House have significant contact with employees throughout the campus. Home health aides accompany Frederick House residents to activities in other areas of the campus, including the aquatic

center, or to meals in dining rooms outside Frederick House. Laundry employees pick up and deliver laundry throughout the campus. Employees from all areas take meals at the Windows Café. There is also evidence of employee interchange. Job vacancies throughout the campus are posted in the human resources area. Employees have transferred from Frederick House to other areas of the campus and vice versa.

The instant case can be distinguished from *Passavant* wherein the petitioner sought to accrete a group of resident coordinators at a new assisted-living facility to a unit of employees at a skilled nursing and assisted-living facility. The buildings were 300 yards apart with no contact or interchange among employees of the two facilities. Residents of the new facility had exclusive access to the dining room and other amenities in that building. The resident coordinators were separately supervised and their job functions were not similar to those of the employees at the other facility. The Board found that the new facility was a distinct, geographically separate facility, and the presumption of a single facility unit was not overcome. In this case, Frederick House and the other buildings on the Employer's campus are sufficiently integrated, physically and operationally, to be treated as a single facility. *Child's Hospital*, 307 NLRB 90 (1992). However, even if Frederick House is considered to be a separate facility, the presumption of an appropriate separate unit is overcome by the evidence of centralized control of labor relations and daily operations, similarity in skills and functions of employees, employee interchange and contact, and the proximity of the facilities to each other. *Brattleboro Retreat*, 310 NLRB 615 (1993).

For the first time in its brief, Petitioner proposed, as an alternative to the unit sought in its petition, two separate units; one a campus-wide service and maintenance unit, and the other a campus-wide food service unit. The issue of a separate food service unit was not raised at the hearing and therefore was not litigated. In particular, evidence with respect to interchange between food service employees and other service and maintenance employees was not developed. If Petitioner desires to pursue a separate unit of food service employees, it will have to file a new petition.

The parties are in agreement that the contingent employees should be included in the unit provided they demonstrate a community of interest with the other unit employees by meeting an appropriate eligibility formula for regularity of hours worked. There is no evidence of a significant disparity in hours worked among the contingent employees and the parties have not raised any other issues that would necessitate a deviation from the eligibility formula in *Davison-Paxon Co.*, 185 NLRB 21 (1970). Therefore, any contingent/on-call employee who regularly averaged four hours or more per week for the last quarter prior to the

eligibility date has a sufficient community of interest for inclusion in the unit and may vote in the election.

5. For the above reasons, and based on the record as a whole, the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time, regular part-time, and contingent/on-call activities assistants, certified nurse assistants, cooks, dietary aides, dining and food services employees, home health aides, housekeepers, laundry aides, nursing assistants, maintenance employees, receptionists, re-occupancy technicians, restorative aides, unit clerks, unit secretaries, drivers, and groundskeepers employed by the Employer at its facility located at 15101 Ford Road, Dearborn, Michigan; but excluding physicians, registered nurses (RNs), professional employees, licensed practical nurses (LPNs), technical employees, skilled maintenance employees, business office clerical employees, managers, guards and supervisors as defined in the Act.

Those eligible shall vote as set forth in the attached Direction of Election.⁵

Dated at Detroit, Michigan this 9th day of November, 2001.

(SEAL)

/s/ William C. Schaub, Jr.
William C. Schaub, Jr.
National Labor Relations Board
Seventh Region
Patrick V. McNamara Federal Building
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⁵ As the unit found appropriate herein is larger than the unit requested, and the Petitioner indicated at hearing a desire to participate in an election in a broader unit, the Petitioner is accorded a period of 10 days from the date of this Decision and Direction of Election in which to submit to the Regional Director for Region 7 an additional showing of interest. In the event the Petitioner does not wish to proceed with an election, it may withdraw its petition without prejudice by notice to the Regional Director for Region 7 within 7 days from the date of this Decision and Direction of Election.